Supreme Court of the United States.

No. 8, Original.—October Term, 1906.

In the Matter of George Moran, Petitioner.

[November 5, 1906.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a petition for a writ of habeas corpus and a writ of certiorari, brought by a person imprisoned on a conviction for murder, alleging that the judgment under which he is held is void. A rule to show cause was issued and the case was heard on the petition and answer. The various grounds upon which the petition is supported are alleged to go to the jurisdiction of the trial court. *Ex parte Harding*, 120 U. S. 782. See *New* v. *Oklahoma*, 195 U. S. 252. A writ of habeas corpus for the same causes was heard by the Circuit Court of Appeals and discharged. *Ex parte Moran*, 144 Fed. R. 594. The judgment also was affirmed by the Supreme Court of the Territory in which the petitioner was tried. *Moran* v. *Territory*, 14 Okl. 544. 78 Pac. R. 111.

The petitioner was tried in the District Court for Comanche County in the Territory of Oklahoma. The first ground now relied upon is that the Court was not duly organized under the Act of Congress requiring the Supreme Court to define the judicial districts, and to fix the times and places at each county seat where the District Court shall be held. The order of the Supreme Court went no further in the way of fixing the place than to specify Lawton for the county of Comanche. This order was made on January 15, 1902, about six months after the land, which had been Indian territory, was opened for settlement and the county created. At that time and at the time of the trial there were no county or court buildings in the county. The order of the Supreme Court was as precise as the circumstances permitted it to be, and the failure to specify a building did not go the jurisdiction of the trial court. There is no pretence that the petitioner lost any opportunities by reason of no building being named.

The next ground argued is that the laws of the Territory were not followed in the selection of the grand jury, because the persons selected were not electors of the Territory and some of them were nonresidents, with other subordinate matters. The order for the summons stated the reason, which was that there had been no election held in the county, and there were no names of jurors in the jury box; whereupon the presiding

judge ordered the sheriff to summon twenty persons from the body of the county. We have heard no answer to the material portion of the reasoning of the Circuit Court of Appeals upon this point. If the legislature of Oklahoma had prescribed the method of selection followed, that method would not have violated the Constitution or any law or treaty of the United States. If it did prescribe a different one, a departure from that was a violation of the territorial enactment alone. The acts of the Legislature of Oklahoma are not laws of the United States within the meaning of Rev. Sts. § 753. If any laws have been violated it is the latter one. Therefore the petitioner is not entitled to release on this ground under Rev. Sts. § 753. The Fifth Amendment, requiring the presentment or indictment of a grand jury, does not take up unto itself the local law as to how the grand jury should be made up, and raise the latter to a constitutional requirement. See *Rawlins* v. *Georgia*, 201 U. S. 638. It is unnecessary to consider whether the judge went beyond his powers under the circumstances. See *Clawson* v. *United States*, 114 U. S. 477. But it is proper to add that while the reason which we have given is logically the first to be considered by this Court, we do not mean to give any countenance to the notion that if the law was disobeyed it affected the jurisdiction of the Court. *Ex parte Harding*, 120 U. S. 782. *Ex parte Wilson*, 140 U. S. 575.

The third ground on which the jurisdiction of the trial court is denied is, that, on August 4, 1901, the date of the commission of the crime, the place was within territory not embraced in any organized county, and was attached for judicial purposes to Canadian County. By the Oklahoma Organic Act, May 2, 1890, c. 182, § 9, (26 Stat. 85, 86,) this is provided for, and by § 10 such offences shall be tried in the county to which the territory 'shall be attached.' It is argued that there had been no law passed changing the place of trial or affecting the order of the Supreme Court attaching the territory to Canadian County. But the very words quoted from § 10 look to the state of things at the time of trial. At that time Comanche County had been organized, and a term of court fixed for it by the order of the Supreme Court dated January 15, 1902. The meaning of this order, so far as the power of the Supreme Court went, is plain. The statute gave the petitioner no vested right to be tried in Canadian County, and his trial in Comanche County conformed to its intent. See *Post* v. *United States*, 161 U. S. 583.

The fourth ground is, that, as the crime was committed on August 4, 1901, two days before the opening of the land for settlement, the place was still under the exclusive jurisdiction of the United States, and therefore the crime was punishable under Rev. Stat. § 5339 alone. The order of the President with regard to the conditions of settlement and entry are referred to as confirming the argument. But those orders were intended

merely to carry out the acts of Congress governing the matter. There is no doubt that Congress was exercising control so far as settlement was concerned. But there is equally little doubt that the title to the territory had passed, that it had become part of the Territory of Oklahoma, and, as such, no longer under the exclusive jurisdiction of the United States within Rev. Stats. § 5339. Act of May 2, 1890, c. 182, §§ 1, 4, 6, 26 Stat. 81; Act of June 6, 1900, c. 813, 31 Stat. 677; Act of March 3, 1901, c. 846, 31 Stat. 1093. See *Bates* v. *Clark*, 95 U. S. 204. *Buster* v. *Wright*, 135 Fed. R. 947, 952. *Ex parte Moran*, 144 Fed. R. 594, 602. Therefore the application of the territorial statute was not excluded and the murder was a violation of the territorial law.

Finally it is contended that the petitioner was compelled to be a witness against himself, contrary to the Fifth Amendment, because he was compelled to stand up and walk before the jury, and because, during a recess, the jury was stationed so as to observe his size and walk. If this was an error, as to which we express no opinion, it did not go to the jurisdiction of the Court. *Felts* v. *Murphy*, 201 U. S. 123.

Rule discharged. Writs denied.

True copy.

Test:

Clerk Supreme Court, U. S.